

Office of the  
CLARK COUNTY LAND USE HEARING EXAMINER

1300 Franklin Street  
P.O. Box 9810  
Vancouver WA 98668-9810  
Phone (360) 397-2375  
Form DS1333

---

**NOTICE TO PARTIES OF RECORD**

**Project Name:** NORWAY GREEN SUBDIVISION  
**Case Number:** PLD2009-00049; SEP2009-00085; BLA2009-00033; HAB2009-00076

The attached decision of the Land Use Hearing Examiner is final unless appealed. An appeal of any aspect of the Hearing Examiner's decision, except the SEPA determination (i.e., procedural issues), may be appealed to the Superior Court or reconsidered by the Hearing Examiner only by a party of record pursuant to Ordinance 10-19, adopted 10/27/2009 by the Board of County Commissioners. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

Mailed on: **January 29, 2010**

**Norway Green Sub**  
**Planner: Richard Daviau**

Joel Stirling  
[joel@sterling-design.biz](mailto:joel@sterling-design.biz)

John & Georgiana Warta  
PO Box 1088  
Camas, WA 98607

Washougal River NA  
Kevin Addis  
512 NE 302nd Avenue  
Washougal, WA 98671

Ted Labbe  
WDFW  
[Ted.labbe@dfw.wa.gov](mailto:Ted.labbe@dfw.wa.gov)

**Norway Green Sub**  
Planner: Richard Daviau  
HEARING DATE : January 14, 2010

MR. DANIEL KEARNS  
Reeve Kearns PC  
621 SW Morrison Street, Ste 1225  
Portland, OR 97205  
(Email)

MR. J. RICHARD FORESTER  
728 NW SKYLINE BLVD.  
PORTLAND OR 97229-6815  
(Email)

MR JOE TURNER  
30439 SE JACKSON RD, SUITE 200  
GRESHAM, OR 97080  
(Email)

THE COLUMBIAN  
MICHAEL ANDERSEN  
P.O. BOX 180  
VANCOUVER WA 98666  
(Email)

VANCOUVER SCHOOL DIST  
ATTN: HEIDI ROSENBERG  
PO BOX 8937  
VANCOUVER WA 98668-8937

VANCOUVER/CLARK PARKS  
INTEROFFICE MAIL

WA DEPT. OF TRANSPORTATION  
ATTN: JEFF BARSNESS  
P.O. BOX 1709  
VANCOUVER WA 98668-1709  
(Email)

FT VANCOUVER REGIONAL LIBRARY  
1007 EAST MILL PLAIN BLVD.  
VANCOUVER WA 98663

CARLA SOWDER  
HEALTH DEPARTMENT  
INTEROFFICE MAIL  
(Email)

JANET SEEKINS  
ASSESSOR'S OFFICE  
(Email)

STEVE SCHULTE  
PUBLIC WORKS  
(Email)

PLANNER:  
(Email)

ROSIE HSIAO  
(Email)

DAVID JARDIN  
PUBLIC WORKS  
(Email)

SUSAN RICE  
(Email)

LINDA MOORHEAD  
CODE ENFORCEMENT  
(Email)

DEVELOPMENT ENG  
(Email)

DESIREE DE MONYE  
(Email)

**BEFORE THE LAND USE HEARING EXAMINER  
OF CLARK COUNTY, WASHINGTON**

Regarding an application by Sterling Design, Inc. )	<b><u>FINAL ORDER</u></b>
for approval of a preliminary plat to divide a 50-acre )	
parcel into 9 lots in the R-5 zone at 36400 SE 20 <sup>th</sup> )	<b>PLD2009-00049<sup>1</sup></b>
Street in unincorporated Clark County, Washington )	<b>(Norway Green Subdivision)</b>

**A. SUMMARY**

1. The applicant requests approval to divide the roughly 50-acre site into 9 lots. The site is located at 36400 SE 20<sup>th</sup> Street; also known as known as Lot 1 of Huffman's Subdivision; also known as tax lot 143253-002, Section 34, Township 2 North, Range 4 East, of the Willamette Meridian (the "site").

a. At the time the application vested, the site and surrounding properties to the east, west and southeast were zoned R-5 (Rural, 5-acre minimum lot size). Properties to the north and southwest were zoned AG-20. Properties abutting the southwest corner of the site were zoned OC (Office Commercial). See Exhibit 3.

b. The site is currently developed with a single-family residence, a barn and other accessory buildings. The applicant proposes to retain the existing home and accessory structures on proposed Lot 6. The applicant proposes to remove the remaining accessory structures and construct new single-family detached dwellings each of the remaining proposed lots. All proposed lots will comply with the minimum dimensional standards for the R-5 zone.

c. The proposed homes will utilize private wells for potable water and on-site septic systems for sewage disposal. The Clark County Health Department's regulations prohibit developments of more than six lots served by private groundwater wells. Therefore the applicant proposed to develop the site in two phases. Phase 1, consisting of proposed Lots 1 through 6, can be developed immediately. The applicant cannot file a final plat for Phase 2, consisting of proposed Lots 7, 8 and 9, until the applicant obtains a Washington State Department of Ecology issued water right or connects those lots to public water.

d. The applicant will improve the existing driveway serving the site from SE 20<sup>th</sup> Street to serve proposed lots 4, 7 and 8 as a shared driveway. The applicant will retain the existing driveway from SE 20<sup>th</sup> Street to serve the existing home on proposed Lot 6. Proposed Lots 1, 2, 3 and 5 will construct individual driveways from SE 20<sup>th</sup> Street. Proposed Lot 9 will construct a driveway from SE 357<sup>th</sup> Avenue, within the existing easement over the adjacent property, Lot 3 of Huffman's Subdivision.

e. The applicant proposes to collect stormwater from impervious areas on the site and treat and discharge the runoff in compliance with County regulations.

---

<sup>1</sup> This decision also addresses SEP2009-00085, BLA2009-00033 and HAB2009-00076.

2. The County issued a Determination of Nonsignificance ("DNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). Hearing Examiner Joe Turner (the "examiner") conducted a public hearing about the application. County staff recommended that the examiner approve the application subject to conditions. See the Development and Environmental Review Staff Report and Recommendation to the Hearing Examiner dated December 30, 2009 (the "Staff Report"). The applicant accepted the findings and conditions in the Staff Report, as modified at the hearing, with certain exceptions. Other persons testified orally and in writing in response to the application. Disputed issues or concerns in the case include the following:

- a. Whether the application qualifies for contingent vesting under CCC 40.51.030.G;
- b. Whether the August 10, 2009 invalidity order altered the comprehensive plan and zoning regulation that apply to this subdivision application;
- c. Whether the applicant can be required to develop the site as a cluster subdivision in order preserve the site's wildlife habitat value;
- d. Whether the applicant can be required to utilize shared driveways to minimize the number of driveway intersections on the collector streets abutting the site; and
- e. Whether this development requires final engineering and construction plan review prior to final plat approval.

3. Based on the findings provided or incorporated herein, the examiner approves the preliminary plat subject to the conditions at the end of this final order.

#### **B. HEARING AND RECORD HIGHLIGHTS**

1. The examiner received testimony at a public hearing about this application on January 14, 2010. That testimony and evidence, including a videotape of the public hearing and the casefile maintained by the Department of Community Development ("DCD"), are included herein as exhibits, and they are filed at DCD. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. County planner Richard Daviau summarized the Staff Report, corrected minor typographical errors in the Staff Report and showed photographs of the site.

- a. He noted that the County's SEPA Determination of Non-Significance ("DNS") was not appealed prior to the January 18, 2010 deadline. Therefore the DNS determination is now final.

- b. He agreed with the changes to the findings the applicant requested in paragraphs 1 and 2 of Exhibit 20. Exhibits 21 and 22 respond to the remaining issues raised in Exhibit 20.

3. Attorney LeAnn Bremer and professional engineer Joel Stirling testified on behalf of the applicant.

a. Ms. Bremer summarized the applicant's objections to the findings and conditions in the Staff Report.

i. She argued that conditions of approval A, B and C, which require final construction plans prior to final plat approval, should be deleted. The proposed development does not require public improvements. The signing and striping and traffic control plans required by condition A-2 are inapplicable. Condition A-4, which requires a final stormwater plan prior to final plat approval, is inconsistent with conditions D-11(g) and E-2, which require stormwater plans prior to issuance of building permits for homes on the proposed lots.

ii. Sh5e objected to proposed condition D-10 in Exhibit 21, which requires construction of driveways prior to final plat approval. The location of the driveways is dependant on the design of the homes on the individual lots. The joint driveway serving proposed Lots 4, 7 and 8 already exists up to the southeast corner of Lot 4. Lots 7 and 8 may not be developed for some time, until the applicant obtains a water right or extends public water to the site. There is no need to extend this driveway to serve those lots at this time. Nothing in the Code authorizes a condition requiring the provision of additional shared driveways on this site.

(A) RCW 58.17.110, cited by staff, only requires that appropriate provisions be made for "[r]oads, alleys [and] other public ways..." It does not apply to private driveways. In addition, this statute only applies to preliminary plat approvals and requires that "appropriate provisions" have been made. Conditions of approval requiring construction of driveways prior to building permit issuance is sufficient to comply with this requirement.

(B) Mr. Horne's argument that shared driveways should be constructed prior to final plat approval is not supported by the Code or state law. The examiner has no authority to impose conditions of approval based on fairness and equity. The buyer and seller of the individual lots can take into consideration the additional costs of constructing the shared driveways when they negotiate the purchase of individual lots.

b. Mr. Stirling noted that the County generally requires that applicant's construct the driveway throat, where driveways intersect the public street, prior to final plat. This allows the future property owners to determine the final location and design of driveways serving their homes, based on the actual design of development on the lot.

i. He argued that the County has no authority to require the use of joint driveways on this site. CCC 40.350.030.B(4)(c)(2)(b) prohibits access to rural collectors if access is available to an existing rural access road. In this case all of the roads abutting the site are collector streets. Access is not available to any rural access roads. Therefore direct access is allowed to the collector streets, subject to the spacing

requirements of CCC 40.350.030.B(4)(c)(2)(c). Nothing in the Code requires the use of joint driveways to limit the number of individual driveways accessing a collector street.

4. Washington Department of Fish and Wildlife (“WDFW”) biologist Ted Labbe summarized his written testimony, Exhibit 12. He argued that development on this site should be delayed until issues regarding the zoning and comprehensive plan designations of the site are resolved on appeal. If development is allowed on this site, it should be clustered to reduce impacts on fish and wildlife movement and habitat on the site.

5. Clark County deputy prosecuting attorney Chris Horne responded to the issues raised in the prior testimony.

a. He noted that the County has no authority to delay review of this development application pending the outcome of the GMA appeal process. The law provides that changes to the zoning and comprehensive plan are final upon adoption. The Board of County Commissioners (the “Board”) changed the comprehensive plan and zoning of this site to Rural, R-5 in January 2009. Those changes were appealed and the Western Washington Growth Management Board issued an “invalidity order” on August 20, 2009. However this application was vested as of April 1, 2009, when the R-5 zoning was in effect.

b. He noted that the Code does not require cluster development to protect wildlife habitat on this site.

c. He argued that the County can require the use of joint driveways on this site in order to maximize the capacity of the collector streets abutting the site. CCC 40.350.030.B(4)(c)(2) is intended to preserve the capacity of collector streets by limiting the number of driveways intersecting such streets. RCW 58.17.110 requires that the proposed development make appropriate provision for public ways, which includes public and private streets. Although the applicant has shown that this development can comply with driveway spacing requirements on SE 20<sup>th</sup> Street, the applicant failed to consider the impact of future driveways on the south side of the road.

d. If joint driveways are required, the applicant should be required to construct them prior to final plat approval in order to ensure that the development complies with RCW 58.17.010 and .110, which require that subdivisions provide the infrastructure necessary for the lots created by the development. He agreed with Mr. Stirling that individual driveways are the responsibility of the individual owners. But shared driveways, serving multiple lots, should be built by the applicant. Otherwise, if the lots at the rear of the site develop first, the owners of those lots will be required to bear the cost of constructing the entire driveway, including stormwater facilities and the extension of electrical utilities. Those shared costs should be borne by the developer. The purpose of the platting statutes is to ensure that these types of issues are dealt with “at the front end” in order to ensure that the infrastructure necessary to support the development is in place at the time the lots are sold.

i. He argued that a joint driveway is a “public right of way” subject to RCW 58.17.010 and .110, because multiple property owners use it.

6. County development engineer David Bottamini argued that the applicant should be required to utilize joint driveways in order to minimize the number of driveways intersecting the collector streets abutting the site.

7. The examiner closed the record at the end of the hearing and announced his intention to approve the proposed development subject generally to the conditions of approval in the Staff Report, as amended at the hearing. The examiner took under advisement the disputed issues regarding the need for additional shared driveways and the timing of construction of shared driveways.

### **C. FINDINGS:**

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The following issues relate to the mandatory applicable approval criteria for this proposal and were addressed by County staff in their reports, by agency comments, by the applicant and others. The Examiner adopts the following findings with regard to each:

#### **LAND USE:**

##### **Finding 1 - Comprehensive Plan and Zoning Designation**

The subject site was designated Rural, R-5 (from Agriculture, AG-20) effective January 2009. The zoning and comprehensive plan designations were effective upon adoption. RCW 36.70A.320(1). Those designations were appealed to the Western Washington Growth Management Hearings Board (the "Growth Management Hearings Board"), which issued an invalidity order on August 10, 2009.<sup>2</sup> However this application vested as of April 1, 2009, the date of the pre-application conference (prior to the issuance of the invalidity order) and that vesting has not lapsed. Therefore this application is subject to the R-5 zoning that was in effect when the application vested.<sup>3</sup>

Mr. Trohimovich, on behalf of Futurewise, questioned whether the application qualifies for contingent vesting under CCC 40.51.030.G. Exhibit 13. As discussed in Exhibit 23, the County held a pre-application conference regarding this application on April 23, 2009. The County's April 30, 2009 pre-application conference final report determined that the pre-app application "[w]as sufficient complete to qualify for contingent vesting pursuant to CCC 40.510.020(G) or .030(G) (as applicable)." That Type I determination was not appealed and is now final. The County determined that the current application was fully complete as of October 20, 2009, less than one hundred eighty (180) calendar days from the date the County issued its pre-application conference final report and therefore the application was vested as of April 1, 2009. See Exhibit 7. That Type I

---

<sup>2</sup> The invalidity order is subject of further appeal and the final outcome is not certain.

<sup>3</sup> "A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county." RCW 36.70A.302(2).



determination was not appealed and is now final. Therefore the Growth Management Hearings Board's invalidity order has no effect on this application, which vested prior to the County's receipt of the invalidity order. RCW 36.70A.302(2).

The examiner has no authority to require that the applicant develop the site as a cluster subdivision as requested by WDFW. CCC 40.210.020.D allows, but does not require, the use of cluster subdivisions in the R-5 zone. The applicant proposed to develop the site as a standard subdivision. As discussed in Findings 5 and 6, the proposed development will protect designated habitat areas on the site, consistent with Code requirements.

#### Finding 2 - Boundary Line Adjustment (BLA)

The applicant proposes to Boundary Line Adjust 0.46 acres of the site (along the north side of proposed Lot 1) to Lot 2 of Huffman's Subdivision (J-124). Since the 0.46 acres to be adjusted is part of the subject site and the property receiving the adjustment is a legal lot of record, no further documentation is needed at this time. Prior to final plat approval, documentation that the BLA was completed shall be submitted or the 0.46 acres shall become part of proposed lot 1. (See Condition D-1)

#### Finding 3 - Development Standards

The project is located in the R-5 zone that requires a minimum lot size of five acres. The minimum lot width requirement is 100 feet, and the minimum lot depth requirement is 140 feet. All nine lots meet these standards. The minimum setbacks are as follows:

- Front - 50 feet
- 30 foot rear and side<sup>4</sup>
- 50 feet from any boundary abutting the adjacent AG-20 zone

A landscape plan shall be submitted with the final plat that shows compliance with L3 (50-foot) buffer standards along the north of proposed lots 8 and 9 abutting the AG-20 zone and L1 buffer standards along the southern portions of proposed lots 1 and 2 that are adjacent to the AG-20 zone. These buffers shall be in place prior to final plat approval unless construction requires deferral until the time of home construction. See CCC 40.320.010 for landscape/buffer requirements and Condition D-12.

#### Finding 4 - State Platting Standards (RCW 58.17)

With conditions of approval, the examiner finds the proposed subdivision will make appropriate provisions for public health, safety, and general welfare of the community. Proof of adequate water and sewer service, as well as treatment of any increase of stormwater runoff, will be provided, to protect groundwater supply and integrity. Impact Fees will also be required to contribute a proportionate share toward the costs of school and transportation provisions, maintenance and services.

#### **Conclusion (Land Use):**

The examiner concludes that the proposed preliminary plan meets the land use requirements of the Clark County Code subject to conditions.

---

<sup>4</sup> CCC Table 40.210.020-3 require a 25-foot street side and 20-foot interior side and rear yard setbacks. However, because fire hydrants are not provided on the site, the Fire Marshall required 30-foot side and rear yard setbacks. See Finding 18.

**HABITAT:****Finding 5**

A mapped Department of Natural Resources (DNR) Type Ns stream flows through portions of the property. According to Title 40.440.010(C)(1)(a), a DNR Type Ns watercourse requires a 75-foot riparian Habitat Conservation Zone (HCZ) in order to protect fish and wildlife habitat. The riparian HCZ extends 75 feet horizontally outward from the ordinary high water mark. The preliminary plat shows an "Existing 100' Environmental Buffer" around the vicinity of the stream, and building envelopes that appear to avoid the riparian HCZ.

**Finding 6**

Staff visited the site on November 25, 2009 in order to verify the location of the stream. Staff observed a series of braided channels in the headwaters of the stream, as opposed to a single stream channel as shown on the preliminary plat. Staff used GPS to map the approximate location of the multiple channels.

Although the regulated stream covers more area than shown in the preliminary plat, the regulated 75-foot riparian zone is smaller than the 100-foot zone shown on the plat. Overall, these differences balance out so that the proposed building envelopes avoid the regulated area.

The proposed building envelopes comply with the exemption criterion identified in Table 40.440.010-1, row 2 of the Habitat Conservation Ordinance.

**Conclusion (Habitat):**

The examiner finds that the proposed subdivision complies with the Habitat Conservation Ordinance, subject to Conditions D-2 and D-11a.

**ARCHEOLOGICAL:****Finding 7**

The proposal is located within a high probability area for containing cultural resources and the Washington State Department of Archaeology and Historic Preservation (DAHP) completed an archaeological review. A historic resource (the Mt. Norway School) is located on the site. DAHP has determined that no further archaeological work is needed if a 30-meter buffer around the foundation of the historic building can be established. Ground disturbing activities within the 30-meter buffer will require monitoring by a professional archaeologist. (See Exhibit 14 and Condition E-4)

The standard conditions regarding discovery of resources will be applied. (See Condition D11-b)

**TRANSPORTATION CONCURRENCY:****Finding 8**

The applicant submitted a traffic profile for this proposal in accordance with CCC 40.350.020.B. Staff has determined that additional trips associated with the proposed development do not exceed travel speed, delay and LOS standards. The intersections in

the vicinity of the proposed development would be minimally impacted by the proposed development. Therefore, further analysis and mitigation by the applicant were not required. The proposed development complies with the Concurrency Ordinance CCC 40.350.020.

## **TRANSPORTATION**

### **Finding 9 - Frontage Roads**

SE 20<sup>th</sup> Street to the south and SE 357<sup>th</sup> Avenue to the west are both classified as “Rural Minor Collector” roadways. The half-width right-of-way dedication that is required is 30 feet. The applicant has provided information indicating the rights-of-way exist and thus no additional dedication is required.

### **Finding 10 - Access Driveways**

CCC 40.350.030 (B)(4)(c)(2)(b) prohibits residential driveway access to rural collectors “[i]f direct lot access is available to an existing rural access road as defined in Table 40.350.030-5.” In this case direct lot access to an existing rural access road is not available. All of the existing streets abutting the site are designated rural collectors. Therefore direct driveway access is permitted to the proposed lots from the abutting rural collector streets.

County staff argued that the applicant should be required to utilize joint driveways in order to minimize the number driveways intersecting the rural collector streets abutting the site and to implement the “intent” of CCC 40.350.030 (B)(4)(c)(2)(b). However the examiner is unable to find any support for Staff’s interpretation, based on the plain language of the Code. The Code prohibits driveway access to rural collector streets where access is currently available to lower classification streets. However in the urban area the Code prohibits driveway access to collector streets where access is currently available “[o]r can be made available” to lower classification streets. CCC 40.350.030 (B)(4)(c)(2)(a). In addition, CCC 40.350.030 (B)(4)(d)(1) prohibits driveways intersecting urban or rural arterial streets “unless no other access to the site exists or can be provided.” If the Board had intended to require developers to limit access to rural collector streets through the use of shared driveways, private roads or other means, it would have clearly said so as it did in regard to arterial and urban collector streets.

Driveways that access SE 357<sup>th</sup> Avenue and SE 20<sup>th</sup> Street shall meet or exceed the minimum 230-foot driveway spacing requirement of CCC Table 40.350.030-7. There is no raised channelization on these streets. Therefore, pursuant to CCC 40.350.030 (B)(4)(c)(2)(c), compliance with the driveway spacing requirement must consider driveways on both sides of these streets. (See Conditions D-11e and F-1)

Driveways shall have a minimum width of 12 feet of clear, unobstructed driving surface. Driveways longer than 300 feet shall be constructed with an approved turnaround at the terminus and approved turnouts at maximum 500-foot intervals (see the standard detail’s manual, drawing #33). Where connecting to a paved rural street, public or private, the connecting road or driveway shall be paved 20 feet back from the edge of the nearest travel lane or right-of-way, whichever is greater. (See Plat Note D-11d)

Proposed lots #4, #7, and #8 will take access from a proposed 30-foot wide joint driveway easement that is to provide access from SE 20<sup>th</sup> Street. The examiner finds that the applicant is not required to construct the joint driveway serving proposed lots #4, #7, and #8. Nothing in the language of the Code requires that the applicant construct the shared driveway prior to final plat. RCW 58.17.110, cited by the County, only applies to “[s]treets or roads, alleys, other public ways...” This is consistent with CCC 40.540.040.D(2)(a), which requires the examiner find that “public and private streets and roads” are adequate to serve the proposed subdivision. The proposed shared driveway is not a “public way” or a private road. It is a private driveway. The County Code clearly distinguishes between streets and driveways. See CCC 40.100.070.

The examiner understands the fairness and equity arguments raised by Mr. Horne. However the examiner has no equitable jurisdiction. The examiner’s decision must be based on the plain meaning of the words in the Code and applicable state law. The need for driveway access will be obvious to potential purchasers of the lots served by the shared driveway and they are free to negotiate the purchase price based on the cost of constructing the shared driveway. The applicant should be required to record a maintenance easement that addresses how the costs of constructing and maintaining the shared driveway will be shared between the affected property owners. (See Condition D-13)

Proposed lot #9 will take access to SE 357<sup>th</sup> Avenue through an existing 30-foot private access and utility easement. The applicant has submitted information via an e-mail dated December 11, 2009 that states the easement does not restrict access from proposed lot #9. The remaining proposed lots will take access to the frontage roadways.

No public improvements are required for this development. All driveway, stormwater and erosion control improvements will be provided by the individual lot owners at the time of building permit review. Therefore final engineering and construction plan review are not required prior to final plat approval.

#### Finding 11 - Phasing

The future owners of proposed Lots 7 and 8 will be responsible for extending the shared driveway to serve these lots. An individual driveway will serve Lot 9 from SE 357<sup>th</sup> Avenue.

#### Finding 12 - Sight Distance

The approval criteria for sight distances are found in CCC 40.350.030(B)(8). This section establishes minimum sight distances at intersections and driveways. Additional building setbacks may be required for corner lots in order to maintain adequate sight distance. Landscaping, trees, utility poles, and miscellaneous structures will not be allowed to impede required sight distance requirements at all proposed driveway approaches and intersections.

The applicant provided a sight distance letter dated December 11, 2009 indicating all proposed lots have the ability to meet sight distance requirements provided vegetation is regularly trimmed back. The analysis recommends that when future homes are designed,

a licensed engineer be retained to evaluate the location to verify the scope of vegetation clearing and potential grading required for 500' of sight distance. (See Condition D-11f)

**Conclusion (Transportation):**

The examiner concludes that the proposed preliminary plan, subject to the conditions and plat notes identified above, meets the Clark County transportation requirements.

**STORMWATER:**

Finding 13 - Applicability

The Stormwater and Erosion Control Ordinance (CCC 40.380) applies to development activities that result in 5,000 square feet or more of new impervious area within the rural area and all land disturbing activities.

The project will create more than 5,000 square feet of new impervious surface, and is a land disturbing activity not exempted in section 40.380.030. Therefore, this development shall comply with the Stormwater and Erosion Control Ordinance (CCC 40.380). The erosion control ordinance is intended to minimize the potential for erosion and a plan is required for all projects meeting the applicability criteria listed in CCC 40.380.050. This project is subject to the erosion control ordinance.

Finding 14 - Stormwater Proposal

The applicant has provided a preliminary stormwater report dated September 2009. The preliminary stormwater plan proposes the use of swales, detention and dispersion on each lot to accommodate runoff from roofs and individual and shared driveways. The individual lot owners will construct the stormwater facilities pursuant to conditions of building permit issuance. There is no need for a final stormwater plan for this development prior to final plat approval.

At the time of building permit application, the home owner must submit a plan for drainage project review and obtain approval for the onsite stormwater control system, unless the stormwater control system for the lot is pre-designed and approved with the final stormwater plan. (See Conditions D-11g and E-2)

If applicable, a covenant running with the land must be recorded with the plat which provides the county inspection staff permission to inspect individual onsite stormwater systems with prior notification. (See Condition D-9d)

Finding 15 - Geologic Hazard Area

All development activities in or adjacent (within 100 feet) to geologic hazard areas shall comply with the provisions of CCC 40.430. The applicant shall provide a geotechnical engineering analysis that addresses definitions of CCC 40.430.010(C) and identifies associated setbacks prior to final plat. Steep slope setbacks shall be delineated on the final plat. (See Plat Note D-9e)

Finding 16 - Grading

A grading permit in compliance with CCC 14.07 is required if excavation exceeds 50 cubic yards and a SEPA is required if the amount of cut or fill exceeds 500 cubic yards (see Condition D-9g).

**Conclusion (Stormwater):**

The examiner concludes that the proposed preliminary stormwater plan, subject to the plat notes and conditions above, is feasible. Therefore, the requirements of the preliminary plan review criteria are satisfied.

**FIRE PROTECTION:**

Finding 17 - Fire Marshall Review

Tom Scott in the Fire Marshal's Office reviewed this application. Tom can be reached at (360) 397-2375 x4095 or 3323, or e-mail at [tom.scott@clark.wa.gov](mailto:tom.scott@clark.wa.gov). Information can be faxed to Tom at (360) 759-6063. Where there are difficulties in meeting these conditions or if additional information is required, contact Tom in the Fire Marshal's office immediately.

Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (See Condition E-1)

Finding 18 - Fire Flow/Hydrants

Fire flow in the amount of 500 gallons per minute supplied for 30 minutes duration is required for this application. Information from the water purveyor indicates that the required fire flow is not available within 1000 feet of the property line. Fire hydrants will not be required. Alternative construction methods shall be used to meet fire flow; this will require 30-foot rear and side setbacks and a class "A" rated roof. An automatic fire sprinkler system may be required for new residential structures exceeding 3,600 square feet of habitable space. (See Condition D-4)

Finding 19 - Fire Apparatus Access/Turnaround

The roadways and maneuvering areas as indicated in the application shall meet the requirements of the Clark County Road Standards. Provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus. (See Condition D-5)

All new private driveways in excess of three hundred (300) feet in length shall be provided with an approved turnaround at the terminus. Turnouts shall be provided at intervals of five hundred (500) feet or less, such that no portion of the driveway is in excess of three hundred (300) feet from an approved turnaround or turnout. (See Condition D-6)

**Conclusion (Fire Protection):**

The examiner finds that the proposed preliminary plan, subject to conditions identified above, meets the fire protection requirements of the Clark County Code.

## **WATER & SEWER SERVICE:**

### **Finding 20**

The use of water wells and septic systems are proposed to serve the site. A “Health Department Evaluation Letter” has been submitted that confirms the Health Department conducted an evaluation of the site and concludes that the proposed on-site wells and septic systems are feasible, subject to conditions of approval. However, the Health Department has determined that only six lots can be served with on-site wells unless the applicant obtains a Washington State Department of Ecology issued water right or connects to public water. The applicant proposes to phase the project where Phase 1 is five new lots and the lot with the existing residence. This phase is acceptable to the Health Department. Phase 2, consisting of four lots, cannot be completed unless applicant obtains a Washington State Department of Ecology issued water right or connects to public water. The examiner finds that the proposed phasing will ensure compliance with Health Department regulations. (See Condition D-7)

Where use of wells or septic systems are proposed, the Health Department must sign the final plat prior to submittal to the county for final plat review and recording (See Condition D-8).

## **IMPACT FEES:**

### **Finding 21**

All residential lots created by this plat (except proposed lot 6 with the existing residence) will produce impacts on schools and traffic, and will be subject to School (SIF) and Traffic (TIF) Impact Fees per dwelling. The site is located in the Rural 2 transportation sub-area with a TIF of \$593.82 per dwelling. The site is located in the Washougal School District with a SIF of \$5,339.39 per dwelling

Impact fees shall be paid prior to issuance of a building permit for each lot. If a building permit application is made more than three years following the date of preliminary plat approval, the impact fees will be recalculated according to the then-current ordinance rate. (See Condition D-9f & E-3)

## **SEPA DETERMINATION:**

### **Finding 22**

On November 19, 2009 the County issued a likely SEPA determination of Non-Significance (DNS) in the Notice of Development Review Application. That DNS determination was not appealed and is now final. Therefore the examiner has no authority to require an Environmental Impact Statement (“EIS”) for this application as Futurewise requested in Exhibit 13.

## **D. CONCLUSION**

Based on the above findings and discussion, the examiner concludes that PLD2009-00049, SEP2009-00085, BLA2009-00033 and HAB2009-00076(Norway Green Subdivision) should be approved, because it does or can comply with the applicable standards of the Clark County Code and the Revised Code of the State of

Washington, subject to conditions of approval necessary to ensure the final plat and resulting development will comply with the Code.

#### **E. DECISION**

Based on the foregoing findings and except as conditioned below, the examiner hereby approves PLD2009-00049, SEP2009-00085, BLA2009-00033 and HAB2009-00076(Norway Green Subdivision) in general conformance with the applicant's preliminary plat (Exhibit 5 and the related plans, reports and proposal (Exhibits 6, 19, 20 and 25). The approval is granted subject to the requirements that the applicant, owner or subsequent developer (the "developer") shall comply with all applicable code provisions, laws and standards and the following conditions. These conditions shall be interpreted and implemented consistently with the foregoing findings.

#### **Conditions of Approval**

<b>A</b>	<b>Final Construction Plan Review for Land Division Review &amp; Approval Authority: Development Engineering</b>
----------	--

Prior to construction, a Final Construction shall be submitted for review and approval, consistent with the approved preliminary plan and the following conditions of approval:

A-1 None

<b>B</b>	<b>Prior to Construction of Development Review &amp; Approval Authority: Development Inspection</b>
----------	---

Prior to construction, the following conditions shall be met:

B-1 None

<b>C</b>	<b>Provisional Acceptance of Development Review &amp; Approval Authority: Development Inspection</b>
----------	--

Prior to provisional acceptance of development improvements, construction shall be completed consistent with the approved final construction/land division plan and the following conditions of approval:

C-1 None

<b>D</b>	<b>Final Plat Review &amp; Recording Review &amp; Approval Authority: Development Engineering</b>
----------	---

Prior to final plat approval and recording, the following conditions shall be met:

D-1 Recorded documentation that the BLA was completed shall be submitted or the proposed adjusted area (0.46 acres) shall become part of proposed lot 1 (see Finding 2).



- D-2 The applicant shall clearly show building envelopes and habitat areas on the face of the final plat. Any revisions to the proposed building envelopes will require additional review. (See Findings 5 and 6)
- D-3 None.
- D-4 Alternative construction methods shall be used to meet fire flow; this will require 30-foot rear and side setbacks and a class "A" rated roof. An automatic fire sprinkler system may be required for new residential structures exceeding 3,600 square feet of habitable space. (See Finding 18)
- D-5 The applicant shall provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface capable of supporting the imposed loads of fire apparatus (see Finding 19).
- D-6 All new private driveways in excess of three hundred (300) feet in length shall be provided with an approved turnaround at the terminus. Turnouts shall be provide at intervals of five hundred (500) feet or less, such that no portion of the driveway is in excess of three hundred (300) feet from an approved turnaround or turnout. (See Finding 19)
- D-7 Phase 2, consisting of four lots, cannot be finaled (Platted) unless applicant obtains a Washington State Department of Ecology issued water right or connects to public water (see Finding 20).
- D-8 Where use of wells or septic systems are proposed, the Health Department must sign the final plat prior to submittal to the county for final plat review and recording.
- D-9 **Developer Covenant** - A "Developer Covenant to Clark County" shall be submitted for recording to include the following:
- a. Critical Aquifer Recharge Areas - "The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800-RECYCLE for more information on groundwater /drinking supply protection."
  - b. Erosion Control - "Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."
  - c. Responsibility for Stormwater Facility Maintenance: For stormwater facilities for which the county will not provide long-term maintenance, the developer shall make arrangements with the existing or future (as appropriate) occupants or owners of the subject property for assumption of maintenance to the

county's Stormwater Facilities Maintenance Manual as adopted by Chapter 13.26A. The responsible official prior to county approval of the final stormwater plan shall approve such arrangements. Final plats shall specify the party(s) responsible for long-term maintenance of stormwater facilities within the Developer Covenants to Clark County. The county may inspect privately maintained facilities for compliance with the requirements of this chapter. If the parties responsible for long-term maintenance fail to maintain their facilities to acceptable standards, the county shall issue a written notice specifying required actions to be taken in order to bring the facilities into compliance. If these actions are not performed in a timely manner, the county shall take enforcement action and recover from parties responsible for the maintenance in accordance with Section 32.04.060.

- d. If applicable, a covenant running with the land must be recorded with the plat which provides the county inspection staff permission to inspect individual onsite stormwater systems with prior notification.
- e. Geohazard Area: The applicant shall provide a geotechnical engineering analysis that addresses definitions of CCC 40.430.010(C) and identifies associated setbacks prior to final plat. Steep slope setbacks shall be delineated on the final plat for lots #4, #7, #8 and #9. Steep slope setbacks shall be delineated on the final plat.
- f. Impact Fees: "In accordance with CCC 40.610, the School and Traffic Impact Fees for each dwelling in this subdivision are: \$5,339.39 (Washougal School District) and \$593.82 (Rural 2 TIF subarea) respectively. The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated 11/14/2009, and expiring on 11/14/2012. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule."
- g. Excavation and Grading: "Excavation/grading shall be performed in compliance with CCC 14.07. A grading permit is required if excavation exceeds 50 cubic yards and a SEPA is required if the amount of cut or fill exceeds 500 cubic yards."

D-10 **Addressing** - At the time of final plat, existing residence(s) that will remain may be subject to an address change. Addressing will be determined based on point of access.

D-11 **Plat Notes** - The following notes shall be placed on the final plat:

- a. Habitat: In regards to development envelopes. "No clearing or development activities shall occur outside the development envelope shown on the face of this site plan unless the activities are exempt from, or approved under, the

provisions of the Clark County Habitat Conservation Ordinance (CCC 40.440)."

- b. Archaeological (all plats): "If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."
- c. Utilities: "An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing, operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."
- d. Driveways: " Driveways shall have a minimum width of 12 feet of clear, unobstructed driving surface. Where connecting to a paved rural street, public or private, the driveway shall be paved 20 feet back from the edge of the nearest travel lane or right-of-way, whichever is greater. Driveways longer than 300 feet shall be provided with an approved turnaround at the terminus. There shall also be approved turnouts constructed such that the maximum distance from turnout to turnout or from turnout to turnarounds does not exceed 500 feet."
- e. Driveway Spacing: "Driveways that access SE 357<sup>th</sup> Avenue and SE 20<sup>th</sup> Street shall meet or exceed the minimum 230 foot driveway spacing requirement of CCC Table 40.350.030-7, considering the location of existing driveways on both sides of these streets."
- f. Sight Distance: "A licensed engineer shall evaluate the driveway locations to verify the scope of vegetation clearing and potential grading required for 500' of sight distance."
- g. Stormwater: "At the time of building permit application, the home owner must submit a plan for drainage project review and obtain approval for the onsite stormwater control system, unless the stormwater control system for the lot is pre-designed and approved with the final stormwater plan."
- h. Privately Owned Stormwater Facilities: "The following party(s) is responsible for long-term maintenance of the privately owned stormwater facilities:  
\_\_\_\_\_."

D-12 **Landscaping** - A landscape plan shall be submitted that shows compliance with L3 (50-foot) buffer standards along the north of proposed lots 8 and 9 abutting the AG-20 zone and L1 buffer standards along the southern portions of proposed lots

1 and 2 that are adjacent to the AG-20 zone. These buffers shall be in place prior to final plat approval unless construction requires deferral until the time of home construction. (See Finding 3)

- D-13 The applicant shall record a maintenance easement addressing how the costs of constructing and maintaining the shared driveway will be shared between the affected property owners. (See Finding 10).

<b>E</b>	<b>Building Permits</b>
----------	-------------------------

	<b>Review &amp; Approval Authority: Customer Service</b>
--	--

Prior to issuance of a building permit, the following conditions shall be met:

- E-1 Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process.

E-2 Stormwater and Erosion Control:

- a. At the time of building permit application, the home owner must submit a plan for drainage project review and obtain approval for the onsite stormwater control system, unless the stormwater control system for the lot is pre-designed and approved with the final stormwater plan.
- b. Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.
- c. Erosion control facilities shall **not** be removed without County approval.

- E-3 **Impact Fees** - The applicant shall pay impact fees for the proposed lots as follows (There will be a one lot impact fee credit due to the existing residence):

- a. \$5,339.39 per dwelling for School Impact Fees (Washougal School Dist.)
- b. \$593.82 per dwelling for Traffic Impact Fees (Rural 2 TIF Sub-area)

If the building permit application is made more than three years following the date of preliminary site plan approval, the impact fees shall be recalculated according to the then-current rate.

- E-4 Building permits shall consider the 30-meter buffer requirement around the foundation of the historic building pursuant to the Washington State Department of Archaeology and Historic Preservation's recommendations (see Exhibit 14 and Finding 7).

<b>F</b>	<b>Occupancy Permits Review &amp; Approval Authority: Building</b>
----------	--

Prior to issuance of an occupancy permit, the following conditions shall be met:

- F-1 **Transportation** - A Road Approach Permit must be applied for and approved for all new driveways accessing public roads that have not been previously permitted.

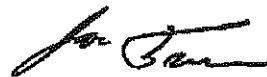
<b>G</b>	<b>Development Review Timelines &amp; Advisory Information Review &amp; Approval Authority: None - Advisory to Applicant</b>
----------	--

- G-1 **Land Division** - Within 5 years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.
- G-2 **Department of Ecology Permit for Construction Stormwater** - A permit from the Department of Ecology (DOE) is required If:
- The construction project disturbs one or more acres of land through clearing, grading, excavating, or stockpiling of fill material; **AND**
  - There is a possibility that stormwater could run off the development site during construction and into surface waters or conveyance systems leading to surface waters of the state.

The cumulative acreage of the entire project whether in a single or in a multiphase project will count toward the one acre threshold. This applies even if the applicant is responsible for only a small portion [less than one acre] of the larger project planned over time. **The applicant shall Contact the DOE for further information.**

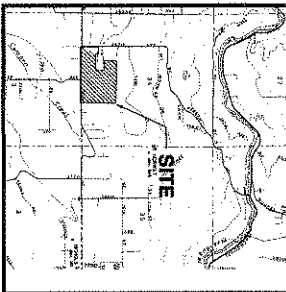
- G-3 **Building and Fire Safety**  
Building and Fire, Life, and Safety requirements must be addressed through specific approvals and permits. This decision may reference general and specific items related to structures and fire, life, and safety conditions, but they are only for reference in regards to land use conditions. It is the responsibility of the owner, agent, tenant, or applicant to insure that Building Safety and Fire Marshal requirements are in compliance or brought into compliance. Land use decisions do not waive any building or fire code requirements.

DATED this 29<sup>th</sup> day of January 2010.



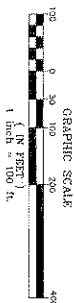
---

Joe Turner, AICP, Hearing Examiner



**OWNER:**  
**JOHN & GEORGIANA WARTA**  
P.O. BOX 1088  
CAMAS, WA 98607  
P6BWA@aol.com

**CONTACT:**  
**JOEL STIRLING**  
2208 E. EVERGREEN BLVD.  
VANCOUVER, WA 98661  
PH: (360) 759-1794  
FAX: (360) 759-4983  
EMAIL: JOEL@STIRLING-DESIGN.BIZ



SHEET INDEX	
PROPOSED DEVELOPMENT PLAN WITH EX. CONDITIONS	1
PRELIMINARY BOUNDARY SURVEY (BY OTHERS)	2
BOUNDARY LINE ADJUSTMENT CURRENT CONDITIONS PLAN	3
BOUNDARY LINE ADJUSTMENT PROPOSED ADJUSTMENT PLAN	4
PROPOSED SUBDIVISION PLAN	5

TABLE 40.210.020-3.				
MINIMUM SETBACKS				
ZONING	FRONT (FEET)	SIDE		REAR (FEET)
		STREET (FEET)	INTERIOR (FEET)	
R-5	50	25	20	

**ACRES (2,400,156 sq.ft.)**

**SITE INFORMATION**

ADJACENT TO FIELD STATE	
LATITUDE: 36° 52' 00" N	LONGITUDE: 76° 00' 00" W
OWNER: LATTITUDE, INC. (260) 219-0444	
LOCATION: 10000 N. HILL & ROCK	MAJOR DRAINAGE: 2
LOCAL SETBACK: 0	
916 LOCATION: CLARK COUNTY, VA	
70% AREA: 55.10 ACRES	
Notes:	5148-B-18124-VA

[illegible][illegible]

55.1 AC

	BOUT BOUT PRO			ZON R-	CR
--	---------------------	--	--	-----------	----

PROPOSED	SECONDARY L
5	NING
ES	
ALUMINUM	
SOA 11	
Red	
SALA 8	
SIC 66	
SITE 40	

NAME	ADAM
ADDRESS	1000 N. 10TH ST.
CITY	MINNEAPOLIS
STATE	MINN.
ZIP	55403
PHONE	612-338-1234
FAX	612-338-1234
EMAIL	ADAM@EXAMPLE.COM
DATE	05/01/2000

[illegible]

CLAREN  
PROCES  
PLAN  
40.1  
STREET  
(FEE)  
25  
IN  
NEW, H  
PLAC  
COUNTY  
8255

210.0  
MIL  
SID  
ET  
(T)

[illegible]

3. JIM S  
RIDER  
(ST)  
sq  
MA  
214-0  
TO D.A.S

3  
4  
5

CKS  
AR  
(ET)  
CN  
DATE 11-7  
2200  
BASTA\

S	P	PA
D		

Project:

NORWAY

100  
09-4  
BC  
ENT. 24  
Sheet

[illegible]

Sheet Description:

PROPOSED DEVELOPMENT PLAN  
W/EXISTING CONDITIONS

STERLING  
DESIGN, INC.

**PREPARED BY:**  
STERLING DESIGN, INC.  
2208 E. EVERGREEN BLVD  
SUITE A  
VANCOUVER, WA 98081  
PH. (360) 759-1794  
FAX (360) 759-4963  
mail@sterling-design.biz



# HEARING EXAMINER EXHIBITS

**APPLICATION:** Norway Green Subdivision

**CASE NUMBERS:** PLD2009-00049

**Hearing Date:** 1/14/10

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
1		CC Development Services	Aerial Map
2		CC Development Services	Vicinity Map
3		CC Development Services	Zoning Map
4		CC Development Services	Comprehensive Plan Map
5	9/29/09	Applicant: Sterling Design	Full Size Plans
6	9/29/09	Applicant: Sterling Design	Application Packet: Cover Sheet, Application Form, Application Fee, Pre-App Rpt, GIS Packet, Narrative, Legal Lot Det, Approved Prelim Plans abutting Site, PreLim Boundary Survey, Soils Analysis Rpt, Stormwater TIR Rpt, PreLim Dev Plan, Engineer Statement, Traffic Study, SEPA, Proof of ARCH Pre-Det, Sewer Dist Ltr, Water Utility Rvw, Health Dept Eval Ltr, CC&R's, Associated Apps: Cross Circulation Plan, BLA, Habitat Pre-Det
7	10/20/09	CC Development Services	Development Review Fully Complete Determination
8	11/9/09	CC Development Services	REVISED - Development Review Fully Complete Determination
9	11/19/09	CC Development Services	Notice of Type III Dev Review/Optional SEPA & Public Hearing
10	11/19/09	CC Development Services	Affidavit of Mailing Public Notice
11	11/30/09	Confederated Tribes/Bands of the Yakama Nation	Comment Letter
12	12/1/09	Dept. of Fish & Wildlife	Comment Letter
13	12/2/09	Futurewise	Comment Letter
14	12/3/09	Dept. of Archaeology/Historic	Comment Letter
15	12/4/09	Dept. of Ecology	Comment Letter
16	12/23/09	CC Development Services	Notice of Public Hearing

17	12/30/09	CC Development Services	Affidavit of Posting Public Notice
18	12/30/09	CC Development Services – Richard Daviau	Type III Development & Environmental Review, Staff Report & Recommendation
19	12/11/09	Applicant: Sterling Design	E-mail regarding access easement
20	1/12/10	Miller Nash - LeAnne Bremer	Response to staff report
21	1/13/10	CC Development Engineering	Engineering Addendum
22	1/14/10	CC Development Services	E-mail from Richard Daviau regarding Archaeological issue
23	1/14/10	CC Prosecuting Attorney's Office – Christine Cook	Plan Designation Issue
24	1/14/10	CC Development Services	Power Point Pictures
25	1/14/10	Leanne Bremer	Aerial of Site
26			
27			
28			
29			
30			

Copies of these exhibits can be viewed at:

Department of Community Development / Planning Division  
1300 Franklin Street  
Vancouver, WA 98666-9810